

**EXHIBIT 1**  
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28 *Attorneys for Defendant Apple Inc.*

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA

19  
20 AliveCor, Inc.,

CASE NO. 4:21-CV-03958-JSW-SK

21 Plaintiff,

DEFENDANT APPLE INC.'S SUR-REPLY  
22 v.  
23 TO ALIVECOR, INC.'S MOTION FOR AN  
24 ADVERSE JURY INSTRUCTION

25  
26 Apple Inc.,

27 The Honorable Jeffrey S. White

28 Defendant.

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1 Apple brings this Sur-Reply to AliveCor, Inc.'s Motion for an Adverse Jury Instruction (the  
 2 "Motion") to address a series of false statements that AliveCor makes for the first time on Reply.  
 3 AliveCor's opening papers did not mention the fact that Apple collected over 240,000 documents  
 4 from Mr. Cha's custodial files, misleadingly suggesting to the Court that all of Mr. Cha's materials  
 5 were lost. Dkt. 154 at 1 ("Apple did not preserve Mr. Cha's files and instead (in Apple's own words)  
 6 purged them in June 2021."). But that is not true. In fact, AliveCor previously had asked Apple's  
 7 Rule 30(b)(6) witness where the "240,000 files c[a]me from." Dkt. 153-4 at 52:6. Apple's  
 8 Opposition discussed this set of documents, detailing that collected files were subject to AliveCor's  
 9 own search terms, and only 45 were found to be non-duplicative and responsive in this case. Dkt.  
 10 157 at 3.

11 After failing to mention the existence of these custodial documents in the opening papers,  
 12 AliveCor's Reply then purported to describe the nature of those 240,000 custodial documents.  
 13 Without any apparent basis, AliveCor told the Court that the 240,000 files are "random system files,"  
 14 are "**not** work emails or documents," are "files that are simply there to run the operating system or  
 15 various applications," and are not "**work**-related documents or files." Dkt. 161-1 at 1, 6 (emphasis in  
 16 original).

17 These statements are not evidence, and they are not supported by any facts or evidence –  
 18 they're just wrong. The 240,000 custodial documents were retrieved [REDACTED]

19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED] The following are the *facts* about the contents of the  
 22 collected Cha custodial documents:

- 23 • At least 70% are file types such as text messages, iChats, PDFs, PowerPoints, emails,  
 24 Keynotes, Word documents, Excel files, and iCals.
- 25 • Over 49,000 are calendar entries, which would show Mr. Cha's various appointments,  
 26 meetings, and calls.
- 27 • Over 6,000 are PowerPoint and Keynote presentation files.
- 28 • Nearly 10,000 are PDF files.

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- Over 59,000 are Messages.
- Nearly 1,300 are Microsoft Word documents.

3 These numbers describe the distribution of files after the 240,000 documents were de-  
4 duplicated, and thus they are very likely conservative counts of the total documents.

5 Finally, it is notable that AliveCor never asked Apple's Rule 30(b)(6) witness about the  
6 composition of the 240,000 documents that Apple collected and from which it ultimately produced.  
7 Nevertheless, she explained that [REDACTED]  
8 [REDACTED]  
9 [REDACTED]. Dkt. 153-4 at 46:17-47:1, 52:1-23.

10 Apple respectfully requests that this Court take into consideration the above corrections and  
11 clarifications to the record.

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15 Respectfully submitted,  
16 DATED: April 21, 2023 GIBSON, DUNN & CRUTCHER LLP  
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18 By: /s/ Jason C. Lo  
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